
OLR Bill Analysis

sHB 6486

AN ACT CONCERNING HOME HEALTH CARE SERVICES AND THE ESTABLISHMENT OF A PERSONAL CARE ATTENDANT WORKFORCE COUNCIL.

SUMMARY:

The bill establishes a 13-member Personal Care Attendant (PCA) Quality Workforce Council charged with various tasks aimed at improving the recruitment, retention, and working conditions of PCAs. With the assistance of the Department of Social Services (DSS) and Department of Developmental Services (DDS) commissioners, it also establishes and maintains a PCA referral registry and offers education for prospective PCAs and their clients. It must study and recommend plans to DSS which the department can accept, modify, or reject.

The bill establishes statewide collective bargaining rights for PCAs working in state-funded programs. Under current law, they are not entitled to union representation because they generally do not have the same employer. Under the bill, the council may become the workers' employer for collective bargaining purposes; the DSS commissioner or his designee acts as chief executive officer.

The bill states that consumers and surrogates retain their rights to (1) hire or refuse to hire, (2) supervise, (3) direct the activities of, and (4) terminate the employment of any PCA. They can also hire a PCA who is not referred by the council.

It is unclear how the council's status as a PCA's employer can be reconciled with the consumer's status, which is also that of employer.

EFFECTIVE DATE: July 1, 2011

DEFINITIONS

Under the bill, a “PCA” is a person employed by a consumer or surrogate to provide PCA assistance to the consumer. “PCA assistance” means supportive home care, personal care, or another nonprofessional service provided to a person with a disability or to an elderly person who requires assistance to (1) meet the person’s daily living needs, (2) ensure the consumer may adequately function in his or her home, or (3) provide the consumer with safe access to the community.

A “consumer” is a person who receives PCA services under any state program that provides services from a PCA, including the following:

1. DSS’ acquired brain injury and personal care assistance waivers,
2. Connecticut Home Care Program for the Elderly,
3. pilot home care services for disabled persons, and
4. DDS’ individual family support waiver.

A “surrogate” is a consumer’s legal guardian or a person identified in a written agreement as having responsibility for the consumer’s care.

PCA QUALITY HOME CARE WORKFORCE COUNCIL

The bill establishes a 13-member PCA Quality Home Care Workforce Council, with the DSS commissioner, or his designee, acting as chairman. By October 1, 2011, the council must, with DSS’ assistance, begin to study issues relating to recruiting, retention, and adequacy of PCAs. The department must also assist the council in making recommendations to the DSS commissioner to improve the quality, stability, and availability of PCAs by developing:

1. better means to identify and recruit PCAs;
2. training and educational opportunities for PCAs and consumers;
3. one or more registries to (a) provide routine, emergency, and

respite referrals of qualified PCAs to consumers and surrogates who are authorized to receive long-term, in-home, personal care services by a PCA; (b) enable customers and surrogates to access relevant information about prospective PCAs, such as their training, educational background, and work experience; (c) provide appropriate employment opportunities for PCAs; and (d) establish standards concerning the wages, benefits, and conditions of employment.

The DSS commissioner may implement, modify, or reject the council's recommendations.

The bill requires the council to develop the expertise necessary to complete the study and develop its plan and recommendations by studying the experiences and best practices of other states, such as Massachusetts, that administer similar programs for PCAs.

Beginning July 1, 2013, the council gains the authority to:

1. recruit prospective PCAs;
2. provide training to PCAs and consumers; and
3. establish or operate a registry, as described above.

It may perform these functions on its own, through a contractual agreement with another entity, or by agreement with DSS. The council may coordinate its activities and cooperate with similar agencies in other states.

Council Membership and Terms in Office

The DSS commissioner or his designee is the chairperson of the council. The other members are the DDS commissioner and health care advocate, or their designees. The remaining 10 must be either consumers or surrogates, appointed as follows:

1. two each by the governor, House speaker, and Senate president pro tempore; and

2. one each by the House and Senate majority and minority leaders.

All appointments must be made by August 1, 2011. Members serve three-year terms, except the initial appointee of the House speaker and Senate president pro tempore serve two-year terms and the initial appointees of the House and Senate majority leaders serve one-year terms. The appointing authority fills vacancies for the expiration of the term of the member being replaced; replacements must be appointed within 30 days. Council members are reimbursed actual expenses reasonably incurred in the performance of their duties.

Meetings

Under the bill, the chairperson must convene the first meeting by September 1, 2011. Subsequent meetings must be held at times determined by the chairpersons or upon the written request of any five council members. Six members constitute a quorum for the transaction of any business.

DSS AND DDS TO SUPPLY PCA LISTS TO COUNCIL AND STATE BOARD OF LABOR RELATIONS

The bill requires the DSS commissioner, with the assistance of the DDS commissioner, to compile and maintain a list of names and addresses of all PCAs who have been paid through a state-funded program that provides PCAs. The list cannot include the name of any consumer, any designation that a PCA is a relative of a consumer, or any designation that the PCA lives with a consumer.

The list must be updated at least monthly; any vendor or contractor that provides personal care services must assist and cooperate with the commissioners in compiling and maintaining the list. The commissioners, in consultation with the council must use the list to monitor recruitment, retention, and other employment patterns of PCAs and for "other appropriate purposes."

The first PCA list must be provided to the council and the State Board of Labor Relations (SBLR) by October 1, 2011. The DSS commissioner must provide updated lists upon request of either entity and must comply with reasonable requests concerning the list's form.

Not later than seven days after the SBLR receives a request from a union that is interested in representing PCAs and that is legally authorized to do so, it must furnish the union with the most recent list of PCAS.

UNION RECOGNITION

The bill exempts unions seeking to represent PCAs from the statutory requirement to present signed union authorization cards to demonstrate workers' interest in being represented by the union. The bill specifies that all elections involving questions concerning the representation of PCAs must be conducted by mail ballot.

COLLECTIVE BARGAINING AND BINDING ARBITRATION

The bill makes PCAs state employees as defined in state labor law for the limited purpose of collective bargaining and the council its Executive Branch employer, with the DSS commissioner as its chief executive officer, for this purpose only. As such, the council has the authority and duty to bargain and enter into agreements with a union certified by the SBLR as the exclusive bargaining agent of PCAs to establish wages, benefits, and other terms and conditions of employment. It appears that the collective bargaining obligation could arise before the date on which the council's powers are expanded (July 1, 2013).

Unionized PCAs are expressly ineligible for state employee benefits and cannot strike. It is unclear how a union grievance procedure would work under the bill, as the council is the worker's nominal employer, but the facts giving rise to the dispute may relate to the terms and conditions of employment created by the consumer for whom the PCA works.

Union Contract and Arbitrator's Award Are Binding

The bill provides that the contract or an arbitrator's award is binding, except that a contract provision or arbitrator's award that requires additional state funding does not become final until the legislature approves the appropriation of funds.

If the parties choose to engage in voluntary, statutorily authorized interest arbitration, the bill directs the arbitrator to take into account:

1. the nature of the personal care services programs at issue;
2. the needs and welfare of consumers, including recruitment, retention, and quality of needs with respect to PCAs;
3. the history of negotiations between the parties;
4. the existing conditions of employment of similar groups of employees;
5. the wages, fringe benefits, and working conditions prevailing in the labor market;
6. the overall compensation of the employees involved in the arbitration, including benefits;
7. the employer's ability to pay; and
8. changes in the cost of living.

The bill states that, although PCAs are council employees for collective bargaining purposes, that circumstance does not alter the obligations of the state or the consumer to provide the state's or the consumer's share of Social Security, federal and state unemployment taxes, Medicare and workers' compensation insurance under the Federal Insurance Contributions Act, federal and state unemployment law, or the state workers' compensation act.

GRANTS AND FEDERAL MATCHING FUNDS

The bill authorizes the council to seek and accept grants of money, services, or property from the federal or state government, political subdivisions, or agencies of such entities. It states that this includes federal matching funds under the Medicaid program. The council is authorized to do everything necessary to apply for such grants.

OBLIGATION TO COOPERATE

The bill requires the Social Services and Developmental Services departments, other state agencies, council members, agents of the state and fiscal intermediaries to cooperate in the bill's implementation and with union contracts. These obligations include making required payroll deductions as authorized by union agreement or arbitrator's award.

WAIVER APPLICATION

The DSS commissioner must submit an application for a waiver of federal law, if necessary, to carry out the bill's provisions. He and the DDS commissioner and other state agencies must take all actions reasonably necessary to obtain waiver approval and to ensure the continuation of necessary federal funding.

BACKGROUND

PCAs

Each PCA must be at least 18 years of age and (1) able to understand and carry out directions given by the client and to physically perform the duties of the client's plan of care, (2) willing to receive training in the duties to be performed to handle emergencies, (3) able to maintain an effective working relationship with the client, and (4) operate any special equipment needed to help with activities of daily living. Non-spousal family members may provide PCA services.

A person cannot be a paid PCA if he or she is:

1. a spouse,
2. a conservator,
3. related to the conservator, or
4. has provided services for free in the past.

COMMITTEE ACTION

Human Services Committee

Joint Favorable

Yea 11 Nay 7 (03/17/2011)

